

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
MANUFACTURERS MINERAL CO., )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 79-131

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.03 of Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, Chris Smith and David Akana (presiding) at a formal hearing in Tacoma on December 7, 1979.

Appellant was represented by its attorney, H. Donald Gouge; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties the Board makes

1 these

2 FINDINGS OF FACT

3 I

4 On July 12, 1979 at about 8:45 a.m., respondent's inspector  
5 noticed a tan-colored plume coming from appellant's site at 1215  
6 Morster Road in Renton. After positioning himself, he observed the  
7 plume, which was coming from appellant's gravel dryer stack, and  
8 recorded opacities ranging between 35 and 45% for twelve consecutive  
9 minutes. The inspector then met with appellant's president and  
10 discussed the observation. When the inspector departed, the plume  
11 was not in violation of Regulation I.

12 For the foregoing occurrence, appellant was sent a Notice of  
13 Violation from which followed a \$250 civil penalty for the alleged  
14 violation of Section 9.03 of Regulation I.

15 II

16 Appellant provides custom products for architectural and  
17 industrial uses, including rock products manufactured to strict  
18 specifications. The equipment involved in this appeal is a gravel  
19 dryer. Before being fed into a rotary drum dryer, gravel is washed  
20 at least two times and stockpiled wet on an asphalt slab. After it  
21 is fed into the dryer, wet gravel is heated to remove the moisture.  
22 Moist air and some particulate matter removed from the gravel are  
23 exhausted into the atmosphere through a stack. The dryer operates  
24 only seven or eight days each month for varying periods of time.

25 III

26 From tests he conducted, appellant calculates that the average  
27

1 particulate emissions from the stack are about 1.44 lbs/hr. based  
2 upon samples taken at the dryer. The tests show average figures  
3 taken at a time different than the time of the inspector's  
4 observation. The conditions at the time of the tests were not shown  
5 to be similar to conditions at the time of the inspector's  
6 observation. Further, the tests were not shown to have complied  
7 with the methods set forth in the regulation.

#### 8 IV

9 Pursuant to RCW 43.21B.260, respondent has filed a certified  
10 copy of its Regulation I and amendments thereto which are noticed.

11 Section 9.03 of Regulation I makes it unlawful for any person to  
12 cause or allow the emission of any air contaminant for more than  
13 three minutes in any one hour which is of such opacity as to obscure  
14 an observer's view to a degree equal to or greater than does smoke  
15 designated as No. 1 (20% density) on the Ringelmann Chart. Section  
16 9.03(e) provides that Section 9.03 does not apply when uncombined  
17 water is the only reason for the failure of the emission to meet the  
18 requirement of this section. In this instance water was combined  
19 with particulate matter.

20 Section 9.09 of Regulation I makes it unlawful for any person to  
21 cause or allow the emission of particulate matter in violation of  
22 Section 9.03, or in an amount exceeding certain emission limits for  
23 a rate of processing. Appellant contends that it is allowed a  
24 maximum of 19.2 lbs/hr. particulate emission under this provision.

25 Section 3.29 of Regulation I provides for a civil penalty of up

26 -0  
27 FINAL FINDINGS OF FACT,  
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1 to \$250 per day for each violation of Regulation I.

2 V

3 Appellant has been found in violation of Regulation I on an  
4 earlier occasion. See PCHB No. 78-89.

5 VI

6 Any Conclusion of Law which should be deemed a Finding of Fact  
7 is hereby adopted as such.

8 From these Findings the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 Appellant violated Section 9.03 of Regulation I as alleged on  
12 July 12, 1979. Appellant was not shown to have violated the weight  
13 rate standard of Section 9.09 of Regulation I. However, meeting a  
14 portion of one regulation, i.e., the weight rate provisions of  
15 Section 9.09, does not excuse a violation of another section, i.e.,  
16 Section 9.03. Thus, the civil penalty was properly assessed and is  
17 reasonable in amount under the circumstances of this case. However,  
18 appellant appears to have good faith intentions to have an emission  
19 control device for the dryer designed and installed in April of  
20 1980, at substantial expense. It would best serve the purposes of  
21 the Clean Air Act for appellant to apply the \$250 civil penalty to  
22 the cost of the control equipment.

23 II

24 Any Finding of Fact which should be deemed a Conclusion of Law  
25 is hereby adopted as such.

26 From these Conclusions, the Board enters this

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

ORDER

The \$250 civil penalty is affirmed, provided however, that the entire penalty is suspended on condition that appellant install appropriate control equipment in accordance with Regulation I and complete installation thereof on or before August 31, 1980 as evidenced by compliance with Section 6.09 of Regulation I. Failure to meet the condition shall cause the \$250 civil penalty to become due and payable.

DATED this 19<sup>th</sup> day of December, 1979.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington  
NAT W. WASHINGTON, Chairman

Chris Smith  
CHRIS SMITH, Member

David Akana  
DAVID AKANA, Member

FINAL FINDINGS OF FACT,  
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